

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Notice of Apparent Liability for Forfeiture of)	Control No. 9805196
)	NAL/Acct No. X32080010
KGNT, Inc.)	
)	
Licensee of FM Broadcast Station KGNT(FM),)	
Smithfield, Utah, Facility ID # 38274)	

FORFEITURE ORDER**Adopted: February 22, 2001****Released: February 23, 2001**

By the Chief, Enforcement Bureau:

I. Introduction

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) against KGNT, Inc., licensee of broadcast station KGNT(FM), Smithfield, Utah, for willful and repeated violation of Section 310(d) of the Communications Act of 1934, as amended ("Act"),¹ and Section 73.3540 of the Commission's rules.² The noted violations involve an unauthorized substantial transfer of control of KGNT, Inc.

II. Background

2. KGNT, Inc. acquired Station KGNT(FM)³ in November 1993 by assignment of the license from an unrelated party.⁴ At that time, the licensee's stock was wholly owned by Lavon Randall. In October 1995, the licensee issued additional stock to the Bear River Trust ("Trust"), the sole beneficiary of

¹ 47 U.S.C. § 310(d).

² 47 C.F.R. § 73.3540.

³ The station's call letters were previously KNUC(FM) (effective September 1, 1993). The present call letters became effective March 1, 1998.

⁴ File No. BALH-930727GF, granted November 15, 1993.

which was Morgan Skinner.⁵ As a result, Randall owned 50 percent of the licensee's stock and the Trust owned 50 percent. This transaction was reported to the Commission in an Ownership Report (FCC Form 323) dated June 30, 1996. However, no Commission approval was sought for the transaction at that time.

3. On November 6, 1997, the licensee filed an application seeking approval of a *pro forma* transfer of control of the licensee from Randall and the Trust to Legacy Communications, Inc ("Legacy") (File No. BTCH-971106HH). In the course of processing the application, the Commission staff raised questions concerning prior changes in the ownership of the KGNT(FM) licensee and other related licensees. As a result, the licensee filed on December 12, 1997, an application seeking approval, after the fact, of the Trust's 1995 acquisition of a 50 percent interest in the licensee (File No. BTCH-971202GE). Thereafter, on February 20, 1998, the licensee filed an amendment to that application, which was executed by Randall ("Randall Amendment"). The amendment conceded that the licensee had not timely filed an appropriate transfer of control application for approval of the acquisition of 50 percent control by the Trust in October 1995. The amendment indicated that the failure to seek approval was the result of inadvertence and the belief on Skinner's part that a transfer of control would not occur unless one party acquired a 51 percent interest in the license. The amendment also indicated that Randall, who lacked prior broadcast experience, has provided funding for this and related stations. Skinner, whose principal trade is broadcast station management, has been responsible for day-to-day operation of the stations.

4. On March 3, 1998, the Commission staff granted the application seeking belated approval of the Trust's interest in the licensee "without prejudice to whatever further action, if any, may be appropriate with respect to the matter of unauthorized control as set forth in the [Randall Amendment]." As a result, it also granted the application for approval of the *pro forma* transfer of control to Legacy. Thereafter, the former Enforcement Division of the Mass Media Bureau⁶ directed two letters of inquiry to the licensee dated July 22, 1998, and May 26, 1999, concerning the ownership of this and related stations. The licensee responded to the first letter of inquiry on August 26, 1998, and supplemented that response on December 2, 1998, and January 20, 1999. The licensee responded to the second letter of inquiry on June 14, 1999.

5. On March 23, 2000, the Chief, Enforcement Bureau, released a *Notice of Apparent Liability for Forfeiture* to KGNT, Inc. in the amount of \$8,000 based on an apparent unauthorized transfer of control of that licensee. *KGNT, Inc.*, 15 FCC Rcd 5806 (Enf. Bur. 2000) ("NAL"). The NAL found that the Trust's acquisition of a 50 percent interest in the licensee constituted a substantial transfer of control under Section 310(d) of the Act and Section 73.3540 of the Commission's rules and that the

⁵ The record reflects that Skinner originally controlled the Trust as both the trustee and the beneficiary. In an Ownership Report filed by the licensee dated June 30, 1997, the licensee reported that John Allen had become the trustee. However, Skinner created the Trust for estate planning purposes. Skinner remains the beneficiary of the Trust and continues to manage its affairs. Moreover, Allen serves as trustee at Skinner's election, primarily so that there will be someone to operate the Trust if Skinner dies or becomes incapacitated. Accordingly, the evidence indicates that Skinner controls the Trust.

⁶ The duties of the former Enforcement Division of the Mass Media Bureau have since been assumed, in pertinent part, by the Enforcement Bureau.

licensee violated the requirements of those provisions by failing to seek and obtain Commission approval prior to the implementation of the transaction. It also found that the failure continued from October 1995 to March 3, 1998, the date when approval of the acquisition was ultimately granted, and was therefore repeated. It further found that the violations were willful.

6. The *NAL* found that there was no evidence that the failure was the result of an intent to evade the applicable requirement or to conceal facts from the Commission because the licensee reported the Trust's interest in an Ownership Report. It nonetheless found that the violations continued for a substantial period of time and were ultimately corrected only because of the filing of an application seeking approval of an unrelated transfer of control. It further noted that Skinner was an experienced broadcaster who should have been aware of the need to make serious efforts to determine whether the transaction required Commission approval. Based on these considerations, the *NAL* concluded that a forfeiture in the amount of \$8,000 was warranted. This is the base amount for an unauthorized substantial transfer of control pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997) ("*Forfeiture Guidelines*").

7. On April 21, 2000, the licensee filed a pleading captioned "Petition for Reconsideration." We will treat this pleading as a response to the *NAL* pursuant to Section 1.80(f)(3) of the Commission's Rules.⁷ A notice of apparent liability is not a final order and is therefore not subject to a petition for reconsideration.⁸ In its response, the licensee admits that a transfer of control occurred, which it characterizes as "technical." However, it urges that there are mitigating factors that warrant rescission of the forfeiture assessed by the *NAL*.

8. The licensee initially contends that little, if any, change in the operation of the station occurred as a result of Skinner's acquisition of a 50 percent voting interest. On the one hand, it suggests that Randall remained in actual control of the station because Skinner would ultimately defer to Randall, in recognition of the fact that Randall had supplied the funding for the purchase of the station. Conversely, the licensee argues that there was no "change" of day-to-day "control" because the station remained under the day-to-day management of Skinner, in consultation with Randall, both before and after the transfer to Skinner.

9. The licensee next urges that its violation should be considered minor because it did not involve the substitution of an entire new set of owners. It was rather the product of an inadvertent mistake on Skinner's part based on his belief that Commission approval would be required only if 51 percent or more of the ownership were transferred.

10. The licensee further contends that it exhibited good faith by voluntarily disclosing the ownership change in an Ownership Report as well as in the transfer of control applications it filed in 1997. It claims that these considerations warrant a reduction in the forfeiture, citing *The Hinton Telephone*

⁷ 47 C.F.R. § 1.80(f)(3).

⁸ 47 C.F.R. § 1.106(a).

Company of Hinton, Oklahoma, Inc., 8 FCC Rcd 5176 (1993) (“*Hinton*”) and *Weston Properties XVII Limited Partnership*, 8 FCC Rcd 1783 (1993) (“*Weston*”).

11. The licensee next contends that the forfeiture is unwarranted because of its history of overall compliance. It premises its claim to an “exemplary” past record on the fact that KGNT, Inc., has not been the subject of any prior forfeiture.

12. The licensee contends that the amount of the forfeiture assessed by the *NAL* is inconsistent with forfeitures assessed in similar circumstances in *Radio Moultrie, Inc.*, 8 FCC Rcd 4266 (Mass Media Bur. 1993) (“*Moultrie*”) and *Telecourier Communications Corp.*, 9 FCC Rcd 1736 (Mobile Services Division, CCB 1994). The licensee contends that these cases involved comparable acquisitions of a 50 percent ownership interest.

13. The licensee finally notes that a notice of apparent liability for a forfeiture in the amount of \$8,000 was previously issued to another station that is 100 percent owned by Legacy, KEOT(FM), St. George, Utah.⁹ The forfeiture in that proceeding was also based on the unauthorized acquisition by the Trust of a 50 percent ownership interest in the KEOT licensee. The licensee here urges that the Legacy stations should not be subject to separate forfeitures because both violations were the result of a common misunderstanding of the applicable requirements by Skinner.

III. Discussion

14. The licensee does not dispute the violations found in the *NAL*. It rather urges that there are mitigating factors that warrant the rescission of the forfeiture. In examining these claims, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Having considered the licensee’s response in light of these factors, we find no mitigating evidence that would warrant a reduction or waiver of the forfeiture.

15. The licensee’s contentions summarized in para. 8 to 12, *supra*, are identical to contentions raised in response to the *KEOT NAL*. We do not find that they mitigate the licensee’s violations in this case for the same reasons stated in the *KEOT Forfeiture Order*. In particular, with reference to the licensee’s claim of an “exemplary” record of rule compliance, we have concluded investigations of two other licensees controlled by Randall and Skinner in which we found that the licensees engaged in unauthorized substantial transfers of control.¹⁰ The licensee in one of these investigations admitted the occurrence of the violation.

⁹ See *KEOT, Inc.*, 15 FCC Rcd 2710 (Enf. Bur. 2000) (“*KEOT NAL*”), *Forfeiture Order issued, KEOT, Inc.*, DA 01-103 (Enf. Bur., January 17, 2001) (“*KEOT Forfeiture Order*”).

¹⁰ *KEOT, supra*; *KNFL, Inc.*, 15 FCC Rcd 21465 (Enf. Bur. 2000).

In addition, in another investigation, we concluded that a licensee controlled by Randall and Skinner engaged in the operation of a radio station without a license, which the licensee did not dispute.¹¹

16. With respect to the contention that a forfeiture is not warranted here because of the forfeiture previously issued to another licensee controlled by Legacy, we note that, although the licensees of both KEOT and KGNT are now wholly owned subsidiaries of Legacy, that was not the case when the unauthorized transfers of control occurred. Rather, the violations occurred on different dates prior to the transfer of control to Legacy in March 1998 and involved different circumstances. Thus, the violation concerning KEOT began in May 1996 and arose from the Trust's acquisition of the 50% interest of Floyd Ence.¹² Here, the violation began in October 1995 as a result of the issuance of stock to the Trust that reduced the previous 100 percent interest of Randall to 50 percent. We do not find the possibility that these separate violations were the product of a single misunderstanding of the Commission's requirements by Skinner to mitigate either violation. Skinner is an experienced broadcaster who should have been aware of the need to make serious efforts to determine whether the proposed transactions required Commission approval.

17. We accordingly find that the licensee has failed to identify mitigating circumstances justifying cancellation or reduction of the forfeiture amount proposed in the *NAL*. Therefore, we affirm the forfeiture amount of eight thousand dollars (\$8,000).

IV. Ordering Clauses

18. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹³ and Section 1.80(f)(4) of the Rules,¹⁴ KGNT, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willfully and repeatedly violating Section 310(d) of the Communications Act of 1934, as amended,¹⁵ and Section 73.3540 of the Commission's rules.¹⁶

19. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹⁷ within 30 days of the release of this *Forfeiture Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of

¹¹ *KNFL, Inc.*, 15 FCC Rcd 10286 (Enf. Bur. 2000), *recon. denied* DA 00-2285 (Enf. Bur. October 10, 2000).

¹² *See KEOT NAL*, 15 FCC Rcd at 2710-11.

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. § 1.80(f)(4).

¹⁵ 47 U.S.C. § 310(d).

¹⁶ 47 C.F.R. § 73.3540.

¹⁷ 47 C.F.R. § 1.80.

the Act.¹⁸ Payment may be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X32080010. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

20. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by Certified Mail -- Return Receipt Requested -- to: Lavon Randall, President, KGNT, Inc., 210 North 1000 East, P.O. Box 1450, St. George, Utah 84770.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.